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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,425	10/20/2003	Gordon Bremer	061606-1671	2794

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EXAMINER

TSE, YOUNG TOI

ART UNIT	PAPER NUMBER
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2611

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No.

10/689,425

Applicant(s)

BREMER ET AL.

Examiner

YOUNG T. TSE

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20031020.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: in paragraph [0001], the Applicants are requested to update the U.S. Application No. 09/102,176, now U.S. Patent No. 6,647,058. Appropriate correction is required.

Claim Objections

2. Claims 14-21 are objected to because of the following informalities:

In line 1 of each of claims 14-21, it is better to change the term "modem receiver" to "receiving modem".

In claim 14 (lines 2 and 5), claim 17 (line 2), and claim 21 (line2), it is also better to change the term "DSL modem" to "DSL transmitting modem".

In claim 17, line 3 (both occurrences), "step" should be "means".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 2-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The configuration of claims 2-13 does not correspond to the disclosure of the drawings. For example, claims 2, 3, 6, and 11 recite a method of adjusting transmit performance parameters over a DSL comprising the steps of receiving, negotiating, determining, and requesting a received signal either "from a DSL modem" or "with a DSL modem". However, according to the present invention as shown in Figs. 2-4, Fig. 3 shows a transmit power level optimization and Fig. 4 shows a data rate optimization for transmit power level and data rate transmission between a transmitting modem 12 and a receiving modem 14 as shown in Fig. 3. In other words, claims 2, 3, 6, and 11 contain subject matter of the communication of "from a DSL modem" or "with a DSL modem" was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The dependent claims 4-5, 7-10 and 12-13 depend from the independent claim 2.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2, 6-8, 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 2, is the term "a DSL modem" different than "a DSL modem" from line 3 of claim 2?

In claim 6 (line 2) and claim 11 (line 2), the terms "with the DSL modem" and "with DSL modem transmitter" both lack antecedent basis.

In claim 13, line 2, the term "a secondary channel" is indefinite since the precedent claims 1-2 do not include a primary channel.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 2-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldstein U.S. Patent No. 5,265,151.

Regarding claims 2 and 14, Goldstein discloses modems 1 and 2 in Fig. 1, each modem comprises a transmitter modem 34a or 34b for transmitting a transmission power (first parameter) to a receiving modem 38a or 38b for receiving the transmission power, determining a signal/noise ration for the received transmission power, and requesting adjustment of the transmission power (second parameter) from the microprocessor 30a or 30b stored from the memory 32a or 32b if the transmission power is below or above a predetermined transmission power level in order to increase

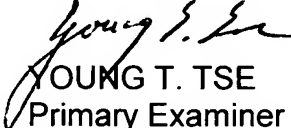
or decrease the transmission power. See the abstract, col. 2, lines 18-31, col. 5, line 29 to col. 7, line 10, col. 7, lines 45-56, and col. 8, line 46 to col. 9, line 58.

Regarding dependent claims 3-13 and 15-21, the transmission power includes transmission power level and the signal/noise ration is the transmission data rate. All the claimed subject matter of claims 3-13 and 15-21 are described in the abstract, col. 2, lines 18-31, col. 5, line 29 to col. 7, line 10, col. 7, lines 45-56, and col. 8, line 46 to col. 9, line 58.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOUNG T. TSE whose telephone number is (571) 272-3051. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


YOUNG T. TSE
Primary Examiner
Art Unit 2611